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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,824	08/18/2003	Ernest Peter Nelson	152.001	5165

9809 7590 03/16/2007
KEELING PATENTS AND TRADEMARKS
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EXAMINER

THANH, QUANG D

ART UNIT	PAPER NUMBER
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3771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/643,824

Applicant(s)

NELSON ET AL.

Examiner

Quang D. Thanh

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) 1-32, 37-39, 41-61 and 63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-36, 40 and 62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/18/03; 8/23/03

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of invention II, claims 33-41 and 62 in the reply filed on 12/11/2006 is acknowledged. Accordingly, claims 1-32, 42-61 and 63 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Moreover, it is noted that claims 37-39 and 41 depend on claim 1, and therefore are also withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

Priority

2. Acknowledgment is made of applicant's claim for foreign priority based on applications filed in United Kingdom on 2/19/02, 2/19/01, and 8/1/01. It is noted, however, that applicant has not filed certified copies of the foreign application as required by 35 U.S.C. 119(b).

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet. The abstract of the disclosure is objected to because it is not limited to a single paragraph. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 62 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 62 is unclear as to whether the claim is directed to a method of using a device, a method of manufacturing a device or a device?, and as best understood by the examiner, it is drawn to a method of using a device for the treatment of ulcers, lymphoedema and prophylactically of deep vein thrombosis, of the human or animal body

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (6,620,117).
8. Re claim 33, Johnson et al. discloses a method of treatment of ulcers, lymphoedema (by stimulating venous circulation, col. 4, lines 44-46) and prophylactically of deep vein thrombosis (col. 4, lines 46-49), of the human body, which method comprises the step of subjecting the body to mechanical vibrations for an

effective period of time, said vibrations having a frequency of between 15 and 75 Hz (col. 13, lines 20-21). Johnson teaches an amplitude of less than 2mm (col. 2, lines 41-42), but is silent regarding an amplitude having a range of between 0.1 and 0.5 mm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select an amplitude having a range of between 0.1 and 0.5 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

9. Claims 33-36, 40 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizrachy et al. (3,853,121) in view of Pickup, Alexander, Gosling ("The effect of cycloid vibration on leg blood flow and ulcer pain, July 1978).

10. Mizrachy discloses a device having a drive unit 20 and a pad 11 (fig. 3) and a method of using the device for treatment of ulcers, lymphoedema (by increasing circulation of the blood, col. 4, lines 63-65) and prophylactically of venous thrombosis (col. 1, lines 3-8) of the human body, which method comprises the step of subjecting the body to mechanical vibrations (col. 4, line 29-32) for an effective period of time and wherein pressure is applied to the body area (via strap 21; fig. 3) by the device subjecting the body to the mechanical vibration. Mizrachy is silent regarding the cycloid vibrations having three orthogonal directions, a frequency of between 15 and 75 Hz and an amplitude of between 0.1 and 0.5 mm. However, Pickup, Alexander, Gosling teaches that relief of pain and improvement of ulcer healing have been reported when cycloid vibration therapy was applied to a number patients at frequency of 50-60Hz for

30 minutes, three times a day. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to operate the device in the Mizrachy's reference, so that the device would provide a cycloid vibration therapy at frequency of 50-60Hz for 30 minutes, three times a day, as suggested and taught by Pickup, Alexander, Gosling, for the purpose of providing pain relief and improving ulcer healing. Regarding "an amplitude of between 0.1 and 0.5 mm", it would have been obvious to one having ordinary skill in the art at the time the invention was made to select an amplitude having a range of between 0.1 and 0.5 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Quang D. Thanh', with a stylized flourish at the end.

Quang D. Thanh
Primary Patent Examiner
Art Unit 3771
(571) 272-4982